IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8479 of 1992

with

SPECIAL CIVIL APPLICATION No 14009 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

FATESINH CHHATRASINH RAJ

Appearance:

1. Special Civil Application No. 8479 of 1992
   MR HARDIK C RAWAL for Petitioner No. 1
   MR SN SHELAT for Petitioner No. 1
   MR JS BRAHMBHATT for Respondent No. 1
2. Special Civil Application No. 14009 of 1993
   MR JS BRAHMBHATT for Petitioner No. 1
   MRS VASAVDATTA BHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/05/2002

COMMON ORAL JUDGEMENT

#. Heard learned advocate Mr.Hardik C. Rawal on behalf of the petitioner Corporation and Mr.J.S.Brambhatt, learned advocate for respondent workman so far Special Civil Application No.8479 / 1992 is concerned. This Court has also heard Mr.J.S.Brambhatt, learned advcoate for petitioner workman and Ms.Vasavadatta Bhatt, learned advocate for petitioner Corporation in connection with Special Civil Application No.14009 of 1993.

#. The petitioner Corporation has challenged the award passed by the Labour Court, Bharuch in Reference No.310 / 1983 [Old No.521 / 1990] dated 23rd April, 1992, wherein the labour court has set aside the termination order dated 27th January, 1983 and grated compensation of Rs.25,000/- in lieu of reinstatement to the respondent workman. The very award has been challenged by the respondent workman against denial of relief of reinstatement and backwages of the interim period. In Special Civil Application No.8479 / 92, wherein RULE has been issued and ad-interim relief in terms of Para-13[B] granted by this Court on 8th December, 1992 and subsequently, said ad-interim relief has been confirmed by this Court with direction that in case if the Corporation fails, the Corporation shall have to pay compensation of Rs.25,000/- to the respondent with 12 % interest. In Special Civil Application No.14009 / 1993, wherein RULE has been issued by this Court on 6th September, 1994 to be heard with SCA No.8479 / 1993.

#. Learned advocate Mr.H.C.Rawal on behalf of the petitioner Corporation has submitted that the respondent workman was working as Badali Workman and while working Badali Workman, he recovered the fare from passengers and not issued tickets and in S.T. cash, Rs.12.55 ps. found to be excess and way bill was found open. The incident involved had occurred on 8th September, 1982, wherein the respondent workman was on route Bharuch - Suva. Against the workman, specific allegation is made that from two passengers of one group, he recovered fare of Rs.2/instead of Rs.2.50 ps and not issued tickets to the passengers. Ultimately, on the basis of the said allegation, on 27th January, 1983 his services came to be terminated by the Corporation. Learned advocate Mr.Rawal has submitted that the labour court has committed error in coming to the conclusion that the departmental inquiry is illegal and invalid. Mr.Rawal, learned advocate has also submitted that before the competent authority, reasonable opportunity was given to the respondent

workman and he was cross examined the reporter as well as workman was also examined by the competent authority but since the workman was working as Badali Workman, there was no need for full fledge inquiry and full fledge inquiry was not held and therefore, conclusion of the labour court is incorrect and contrary to law. Mr.Rawal, learned advocate has also submitted that the labour court has committed gross error in granting Rs.25,000/- to the respondent workman by way of compensation which was beyond the scope of the Reference. He also submits that the labour court has submitted that the labour court has committed gross error in exercising the powers under Section 11-A of the Industrial Disputes Act, 1947.

#. Learned advocate Mr.J.S.Brambhatt on behalf of the respondent workman has submitted that the labour court has committed gross error in coming to the conclusion that because the respondent workman was Badali Workman and not permanent workman and therefore, reinstatement has been wrongly denied by the labour court. Mr.Brambhatt, learned advocate has also submitted that let the workman be temporary or Badali Workman or permanent workman, there will be no discrimination and / or difference while granting the relief of reinstatement once the labour court satisfied that the departmental inquiry is vitiated, however, in such case, it is burden upon the employer to prove the charge against the workman but no oral evidence was led by the corporation before the labour court. The labour court has committed gross error in denying reinstatement with backwages but only granted compensation of Rs.25,000/- in lieu of the relief of reinstatement.

#. Learned advocate Ms.Vasavdatta Bhatt on behalf of the petitioner Corporation has also submitted that the labour Court has rightly appreciated the facts on record and also pointed out that within six months service tenure, the respondent workman has committed serious misconduct of dishonesty and misappropriation and therefore, in such situation, the labour court has rightly denied relief of reinstatement and backwages of interim period.

#. I have considered submissions of the learned advocates for the respective parties in these two petitions. It is not disputed between the parties that the respondent workman was working as Badali Workman and within service tenure of six months period, such incident involved had occurred on 8th September, 1982. The allegation as reflected from the record, charged against the respondent workman that he recovered fare of Rs.2/from two passengers of one group instead of fare of

Rs.2.50 ps. and not issued the tickets and in traffic cash, Rs.12.55 ps. was found excess and way bill was found open. Thereafter, the labour court has examined the question of inquiry and considering Exh.9, wherein inquiry papers produced by the Corporation, the labour Court has come to conclusion that there is no finding recorded by the inquiry officer and no show cause notice was issued by the competent authority to the respondent workman. Therefore, the labour court has come to the conclusion that in absence of the show cause notice and finding, inquiry is declared to be invalid. It is not case of the Corporation that full fledge inquiry was held against the respondent workman. In case of Badali Workman, if allegation is made while alleging misconduct, and if such allegation is denied by the respondent workman, then detailed inquiry is necessary. Such view is taken by this Court in reported decision 1993 [1] GLR 442. Therefore, view taken by the labour court that in absence of the show cause notice and finding, inquiry is vitiated is correct as per the decision of this Court as referred above.

#. Learned advocate Mr.Brambhatt appearing on behalf of the respondent workman has submitted that the workman is entitled to backwages of the interim period from the date of dismissal to date of award. However, considering overall facts and circumstances of the case, according to my opinion, when Badali Workman was not working for the entire month but Badali Workman is given work as per the requirement of the Corporation and the workman is getting wages against the work done in a month and therefore, considering the fact that the respondent workman is not entitled to any amount of backwages of the interim period.

#. Now the question is about granting of relief to the respondent workman. The labour court has observed in para-3 that the respondent workman is entitled to reinstatement in service because of the fact that inquiry has been declared invalid but because the respondent workman was Badali Workman and was not permanent employee of the Corporation, therefore, he has been denied relief of reinstatement, according to my opinion, said conclusion of the labour court is erroneous and this is clear error apparent on the face of the record. There cannot be any difference in granting relief of reinstatement even in case of Badali Workman or temporary or permanent workman, once the order of termination order is set aside by the labour court. Therefore, according to my opinion, said observations of the labour court denying the relief of reinstatement to the respondent

workman because he was Badali workman and not permanent workman, is contrary to the settled law and therefore, the award in question requires to be quashed and set aside.

#. In the result, both these petitions are allowed partly and the award in question passed by the Labour Court, Bharuch in Reference No.310 / 1983 [Old No.521 / 1990] dated 23rd April, 1992 is hereby quashed and set aside. Resultantly, it is directed to the petitioner Corporation to reinstate the respondent workman as BADLI WORKMAN to his original post at original seniority list with continuity of service without backwages of the interim period from the date of termination till the date of award, within period of one month from the date of receiving the copy of this order. The respondent workman is entitled to full wages from the date of Award i.e. 23rd April, 1992 till the date of actual reinstatement.

In both these petitions, Rule is made absolute accordingly. No order as to costs.

Date : 6-5-2002 [H.K.Rathod, J.]

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